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No. 683

In the Supreme Court of the United States

OCTOBER TERM, 1958

GLADYS W. SIMPSON, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The findings of fact and conclusions of law of the District Court (Supp. R. 6–11) are not reported. The opinion of the Court of Appeals (Pet. 1a–11a) is reported at 261 F. 2d 497.

JURISDICTION

The judgment of the Court of Appeals was entered on November 7, 1958. (Pet. 11a–12a.) The petition was filed on February 4, 1959. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

QUESTION PRESENTED

Whether a payment made to petitioner by the Mueller Company after the death of her husband, who had been an executive of the company during his lifetime, constituted taxable income or a gift

under Section 22(b)(3) of the Internal Revenue Code of 1939.

STATUTE INVOLVED

Internal Revenue Code of 1939:

> Sec. 22 [as amended by Sec. 1, Public Salary Tax Act of 1939, c. 59, 53 Stat. 574, and Sec. 111(a), Revenue Act of 1942, c. 619, 56 Stat. 798]. GROSS INCOME.
>
> (a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing) of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal; growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *
>
> * * * * * *
>
> (b) *Exclusions from Gross Income.*—The following items shall not be included in gross income and shall be exempt from taxation under this chapter:
>
> * * * * * *
>
> (3) *Gifts, bequests, devices, and inheritances.*—The value of property acquired by gift, bequest, devise, or inheritance. * * *
>
> * * * * * *
>
> (26 U.S.C. 1952 ed., Sec. 22.)

STATEMENT

The facts taken from the District Court's findings of fact, the undisputed testimony, and exhibits are as follows:

Prior to January 16, 1951, J. Wilbur Simpson and petitioner were husband and wife residing in Decatur, Illinois. Simpson died on January 16, 1951. (Supp. R. 6.) For 52 years, Simpson had been employed by the Mueller Company, and at the time of his death was a director, executive vice president, and a member of the executive committee. (Supp. R. 6–7.)

On February 6, 1950, prior to Simpson's death, the executive committee adopted the following resolution (Supp. R. 7–8):

> WHEREAS, this company for many years has followed a general policy of paying to the widow of a deceased executive, an amount equivalent to the salary for such executive, for a period as is evidenced by the resolution adopted by the Board of Directors of Mueller Co. on February 3, 1928; also by a similar resolution adopted after the death of Mr. Robert Mueller in March of 1940; also by a similar resolution adopted May 24, 1944, following the death of Mr. Adolph Mueller; and by a similar resolution adopted October 2, 1947, following the death of Mr. W. E. Mueller, and
>
> Whereas, it is the desire to restate the said existing policy in more explicit terms,
>
> THEREFORE, BE IT RESOLVED: That in pursuance of the aforesaid policy, and in consideration of services rendered to this company by Lucien W. Mueller, J. W. Simpson,

Albert G. Webber, Jr., Frank H. Mueller, Clarence C. Roarick, Leo Wiant, Odie E. Walker, Emmett M. Reedy, J. L. Logsdon and LeRoy Evans, Mueller Co. will pay, in the event of the death of any or either of them, to his surviving widow, a sum equal to nine months salary of any of the last named executives, at their regular rate, at the date of death, upon and subject to the following terms and conditions:

1. Such payment shall be made only if said individual is an executive in good standing with Mueller Co. or any affiliate or subsidiary, regularly performing the duties and responsibilities of the position held by him on the date of this resolution or those of a higher position to which he may be promoted after the date of this resolution. If such deceased executive is absent from his regular duties on a regularly recognized leave of absence, he shall be deemed covered by this policy.

2. Any payment hereunder will be only to the surviving widow of such decedent and if he leaves no widow surviving him, then no payment shall be made hereunder. By widow shall be meant a wife living with such executive at the time of his decease and not living separate and apart by reason of any legal proceeding or otherwise.

3. That no one named or referred to in this resolution shall acquire or be deemed to have any vested rights by virtue hereof; it being expressly understood that this company, acting by its directors, does not waive or relinquish its right to alter, modify, revoke or rescind this

> resolution at any time in whole or in part and before or after the death of any individual named or referred to herein.

On February 5, 1951, following the death of Simpson, petitioner received a check from the Mueller Company in the amount of $33,750, in pursuance of the resolution (Supp. R. 7–8).

The company charged the payment to an account called "Special Salaries" (R. 31), and deducted it as an expense (R. 33). This deduction was allowed by the Commissioner. (R. 33.)

Petitioner at no time owned stock in the Mueller Company. Her husband owned 1,500 shares out of 136,000 authorized shares, which were subject to a repurchase agreement and not disposable to anyone except the company. (Supp. R. 8.) Petitioner has never been an employee of Mueller Company. (Supp. R. 9–10.)

The salary earned by petitioner's husband prior to his death had been fully paid to him or his estate. (R. 30, 35.) In addition to the payment in question, petitioner received in 1951 $6,833.37 from the Mueller Company pension trust, part of which was taxable and part excludable from income pursuant to a special ruling of the Commissioner. (Supp. R. 8–9.)

The District Court held that the payment to the petitioner was a gift and excludable from gross income. (Supp. R. 11.) The Court of Appeals reversed, one judge dissenting. (Pet. 1a–11a.)

ARGUMENT

This Court has given a liberal construction to the broad language of Section 22(a) of the Internal Revenue Code of 1939, *supra*, p. 2, holding that Congress thereby intended to exert the full measure of its taxing power. *Commissioner* v. *Glenshaw Glass Co.*, 348 U.S. 426. The Court has also held that exclusions, being specifically stated, are to be construed narrowly in the light of the same policy. *Commissioner* v. *Jacobson*, 336 U.S. 28. The court below properly applied these principles in the instant case, and no question of general importance is here presented.

There is no conflict with *United States* v. *Bankston*, 254 F. 2d 641 (C.A. 6th), and *Bounds* v. *United States* (C.A. 4th), decided December 15, 1958 (59-1 U.S.T.C. par 9159). The instant case was appealed by the Government and decided by the Court of Appeals on the theory that the petitioner received compensation which her husband earned prior to his death, knowing that if he remained in the employ of the corporation it would undoubtedly make the payment to his widow pursuant to a long-standing, formalized plan. The *Bankston* case involved the contention that payments to the widow constituted dividends. The Court of Appeals held that they did not; no issue of compensation was involved. In the *Bounds* case the Court of Appeals itself distinguished the present case on the ground that in *Bounds* there was no established plan of payments to the widows of the employees, but merely a spontaneous payment by the

corporation to the widow of the particular employee concerned. The Tax Court also has recognized the difference between a spontaneous payment to the widow of a deceased employee and a similar payment made pursuant to a stated plan adopted prior to the death of the employee. See *Luntz* v. *Commissioner*, 29 T.C. 647. The decision below also is not in conflict with any of the other cases cited by the petitioner, all of them being distinguishable on their facts.

Petitioner's concern with Section 302 of the Revenue Act of 1951, c. 521, 65 Stat. 452, and Section 101(b) of the Internal Revenue Code of 1954 is difficult to understand. Section 302 of the Revenue Act of 1951, applicable to the tax year involved here, amended Section 22(b)(1) of the 1939 Code to exclude from gross income the following:

> (1) *Life Insurance, Etc.*– Amounts received—
>
> * * * * *
>
> (B) under a contract of an employer providing for the payment of such amounts to the beneficiaries of an employee, paid by reason of the death of the employee,
>
> whether in a single sum or otherwise (but if such amounts are held by the insurer, or the employer, under an agreement to pay interest thereon, the interest payments shall be included in gross income). The aggregate of the amounts excludible under subparagraph (B) by all the beneficiaries of the employee under all such contracts of any one employer may not exceed $5,000.

Under Treasury Regulations 111, Section 29.22(b)(1)-2, as added by T.D. 6020, 1953-2 Cum. Bull. 106,

the $33,750 payment in issue here might have been subject to the $5,000 exclusion from gross income. But whether it was or not is immaterial, since the taxpayer's complaint (pars. 6, 7, and 9) and the District Court's findings of fact (Supp. R. 8–9) show that, in addition to the $33,750, the petitioner received from the Mueller Company pension trust the sum of $6,893.37 from which a $5,000 exclusion was allowed. Since the petitioner was entitled to only one exclusion of $5,000 under Section 22(b)(1), she had to seek exclusion of the $33,750 payment on the theory that it was a gift under Section 22(b)(3), *supra*, p. 2. Both in the District Court and in the Court of Appeals, her complaint was drawn and the case was decided on that narrow issue.

We submit that petitioner's further argument concerning the interpretation of Section 101(b) of the Internal Revenue Code of 1954 is also irrelevant here. The only issue in this case is whether the payment received by petitioner was excludable from her gross income as a gift under Section 22(b)(3) of the 1939 Code. If there are problems concerning the interpretation of Section 101(b) of the 1954 Code, such as that which the taxpayer envisions arising from the holding in *Rodner* v. *United States*, 149 F. Supp. 233 (S.D.N.Y.), they are not problems present in the instant case.

Petitioner cites Rev. Rul. 55–609, 1955–2 Cum. Bull. 34, issued in 1955, as "Perhaps the most significant event * * *." (Pet. 16.) This ruling gave effect in a specific instance to the general provision

in the Third Supplemental Appropriation Act, 1952, c. 369, 66 Stat. 101—

> That the foregoing death gratuity payment, and any other death gratuity payment at any time specifically appropriated by this or any other Act or at any time made out of the contingent fund of the House of Representatives or of the Senate, shall be held to have been a gift.

The significance of this statutory provision and ruling, we submit, is that Congress wanted the widows or families of its deceased members to receive tax-free payments, but thought that they would be taxable under the Internal Revenue Code. To forestall this, Congress provided specifically that such payments should be held to be gifts. If Congress had wished to provide that payments to the widows and families of all deceased employees should be gifts, it surely would have said so in a statute of general application. Instead, it enacted a measure dealing only with such payments appropriated by Congress.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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